



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>8/20/01</b>	Bill No:	<b>SB 1184</b>
Tax:	<b>Property</b>	Author:	<b>Senate Revenue and Taxation Committee</b>
Board Position:	<b>§63.1 – Neutral §69.5 – Support §532 – Support §606 – Support</b>	Related Bills:	<b>SB 1181 (SR&amp;T)</b>

### BILL SUMMARY

This bill contains California Assessors' Association sponsored provisions to:

1. Eliminate the need for the transferor to sign the parent-child change in ownership exclusion claim form and also require only one transferee to sign the form. (§63.1)
2. Allow a taxpayer to qualify for a Proposition 60/90/110 base year value transfer if their home was destroyed in a non-governmental declared disaster. (§69.5)
3. Extend the number of tax years subject to escape assessment when a penalty for willful concealment of tangible personal property is applied, from six years to eight. (§532)
4. Modify requirements where contiguous tracts of land under the same ownership need not be separately assessed when they cross tax rate areas. (§606)

### ANALYSIS

#### Parent-Child Change In Ownership Exclusion - Signatures

*Revenue and Taxation Code § 63.1*

#### Current Law

Section 2, subdivision (h), of Article XIII A of the California Constitution provides that the terms "purchased" and "change in ownership" do not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children (or grandparents and grandchildren), as defined by the Legislature. Those terms also do not include the purchase or transfer of the first \$1,000,000 of the full cash value of all other real property between parents and their children, as defined by the Legislature.

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The Legislature adopted Revenue and Taxation Code Section 63.1 to prescribe the terms and conditions under which the parent-child change in ownership exclusion may be granted. Relevant to this bill, Section 63.1 precludes the exclusion unless the taxpayer files a claim form with the assessor. Current law requires that all the transferors and all the transferees sign the claim form. In many cases, the transferor is deceased and the executor must instead sign the form. Additionally, all the transferees (most often the children) must sign the form. For instance, if property was transferred from a mother upon her death to her four children, all four children must sign the claim form. If one child did not file the claim form, then 25% of the property would be reappraised to current market value. Additionally, a signature must be sought from a legal representative of the mother or the executor of her estate.

### **Proposed Law**

This provision would eliminate the need for the transferor to sign the claim form. Instead one of the transferees would attest to the parent-child relationship. Additionally, only one of the transferees need sign the claim form.

### **Comments**

This provision is intended to eliminate delays in processing parent-child change in ownership exclusions due to the signature requirements. It would also help those taxpayers where a signature cannot be easily obtained.

An unintended consequence of eliminating the transferor signature is that a parent with more than one million dollars of property to transfer would lose the ability to direct which property or which child received the property tax benefit.

## **Base Year Value Transfers Post Disaster – Proposition 60/90/110**

*Revenue and Taxation Code §69.5*

### **Current Law**

Revenue and Taxation Code Section 69 provides tax relief to persons who own property substantially damaged or destroyed in a *Governor-declared* disaster. This relief permits property owners to acquire or construct comparable replacement property within the same county and transfer the base year value from the damaged property to the replacement property. To receive a base year value transfer, the replacement property must be acquired within three years after the disaster. These provisions are applicable to any kind of property (i.e. residential, commercial, industrial etc.) (Proposition 50, June 1986 – Article XIII A, Sec. 2(e)(1). )

Revenue and Taxation Code Section 69.3 provides similar tax relief. However, it is limited to replacement *principal places of residence* (i.e. homes) located in a *different* county. This relief is available only if the county where the replacement residence is

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located adopts an ordinance accepting such base year value transfers. To date only six counties have adopted such ordinances. To receive a base year value transfer, the replacement residence must be acquired or newly constructed within three years after the disaster. (Proposition 171, November 1993 – Article XIII A, Sec. 2 (e)(2)

Revenue and Taxation Code Section 69.5 provides that persons over the age of 55 years and disabled persons may transfer, subject to many conditions and limitations, the base year value of their primary residence to a newly acquired replacement residence. Among the limitations on obtaining relief is the requirement that the acquired property be, generally, of equal or lesser value in comparison to the sold property. Proposition 60 (June 1986), Proposition 90 (November 1988), Proposition 110 (June 1990) – Article XIII A, Sec 2(a).

### **Proposed Law**

This bill would amend Revenue and Taxation Code Section 69.5 to allow a base year value transfer to a person who is over the age of 55 years or disabled who would have been eligible for a base year value transfer, except that their principal place of residence was substantially destroyed or damaged by a misfortune or calamity and therefore disqualified because the value of the replacement property is not of “equal or less” value when compared to the value of the original property in its damaged condition.

This bill would define "substantially damaged or destroyed by misfortune or calamity" to mean physical damage amounting to more than 50 percent of its full cash value immediately prior to the misfortune or calamity. Damage would also include “a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the misfortune or calamity and is permanent in nature.”

These provisions would apply to replacement dwellings that are acquired or newly constructed on or after March 24, 1999 commencing with the 1998-99 fiscal year. Thus, they would have an retroactive effect in terms of eligibility, but any tax relief would commence with the lien date of the assessment year in which the claim is filed (i.e. no refunds or cancellation of taxes prior to the date that the claim is filed).

### **In General**

#### **Proposition 50 and Revenue & Taxation Code §69**

**All Property Types Purchased Within the County.** Section 69 provides that persons who own property substantially damaged or destroyed in a Governor-declared disaster may transfer the base year value of that property to a property acquired or constructed as a replacement if it is acquired within three years after the disaster. Base year value transfers are available for all property types; with the limitation that the original property

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and the replacement property must be of the same property *type*: residential, commercial, agricultural, or industrial. The replacement property is “comparable” if it is similar in size, utility, and function to the destroyed property, and if the market value of the acquired property does not exceed 120% of the fair market value of the replaced property in its pre-damaged condition. Property owners may, nevertheless, still receive the disaster relief in cases where the value of the replacement property exceeds the 120% limitation. In such cases, the amount over this threshold is assessed at full market value.

### **Proposition 171 and Revenue & Taxation Code §69.3**

**Principal Place of Residence Purchased In Another County.** The Oakland-Berkeley fire of October 21, 1991, prompted the passage of Proposition 171 which, in turn, authorized the enactment of Section 69.3. The fire’s destruction was so widespread, that not all displaced homeowners were able to find a suitable replacement residence located within their county’s boundaries. Those who purchased a replacement home outside that boundary lost the benefit of maintaining their previous level of property taxation.

To address this situation, voters approved Proposition 171 on November 2, 1993. It amended subdivision (e) of Section 2 of Article XIII A of the California Constitution to authorize the Legislature to provide that the base year value of property substantially damaged or destroyed in a Governor-declared disaster may be transferred to a replacement property located in another county, provided that the replacement property is: 1) located in a county that has an ordinance accepting such base-year value transfers; 2) of equal or lesser value than the original residence; and 3) acquired or newly constructed within three years of the disaster.

To date, six counties extend Section 69.3 property tax disaster relief to displaced homeowners: Contra Costa, Los Angeles, Modoc, San Francisco, Solano, and Sutter.

### **Comments**

1. **Sponsor and Purpose.** This provision is sponsored by the California Assessors’ Association. Its purpose is to provide the benefits of Proposition 60/90/110 to persons over the age of 55 or disabled persons when they are otherwise ineligible for a base year value transfer under Section 69 or 69.3 because the damage to their property did not occur in a governor declared disaster (for example, a single house fire or a small mud slide where few properties were affected).
2. **Existing Law - Rebuild then Sell.** Under existing law a person could qualify for a base year value transfer under Proposition 60/90/110, if they first rebuilt their home (receiving a new construction exclusion under Section 70(c)), and then selling that home. This bill would allow a person to immediately purchase a home and receive a base year value transfer.

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3. **Proposition 60/90/110 – Once in A Lifetime Benefit.** The base year value transfer provision is a constitutionally authorized one-time benefit to any person over the age of 55 or disabled. These amendments preserve this one time right to persons who would have been able to qualify but for the misfortune or calamity. Article XIII A, Section 2(a) provides that the Legislature may establish the appropriate circumstances and definitions for this benefit and this provision merely redefines the value test in this particular instance. It could also be reasoned that there is no constitutional basis for the proposed amendment, as the disaster provisions of Sections 69 and 69.3 were constitutionally provided benefits via Propositions 50 and 171.
4. **Pre-Damage Condition.** This provision redefines the value test in the situation where a property was damaged or destroyed in a misfortune or calamity to provide that the value of the original property will be that in its pre-damaged condition. Of course, valuing these properties would be a more subjective process since it would require that the appraiser estimate various aspects of the property, such as its condition.
5. **Current Tax Relief Provided After a Non-Governor Declared Misfortune or Calamity.** Under existing law, in non-governor declared disaster situations, property tax relief is available where a person rebuilds on the same site. Revenue and Taxation Code Section 70(c) provides that where property has been damaged or destroyed by a misfortune or calamity, the property will retain its previous assessed value after it is reconstructed. (Proposition 8, November 1978)
6. **Inequitable claims in the future.** In the future, it could be expected that similarly situated persons under the age of 55 will state that they are being unfairly treated.

### **Escape Assessments – Tangible Personal Property**

*Revenue and Taxation Code § 532*

#### **Current Law**

Revenue and Taxation Code Section 504 requires a 25% penalty to be added to escape assessments made under Section 502. This section relates to escape assessments where the person willfully conceals, fails to disclose, removes, transfers or misrepresents *tangible personal property* to evade taxation. Under current law, the number of prior tax years that taxes will be billed in this instance is generally six, whereas the number of prior tax years that will be billed when a change in ownership of real property is unrecorded is generally eight.

#### **Proposed Law**

This bill would increase from six years to eight the number of prior tax years that will be billed when a 25% penalty for willful concealment of personal property is levied.

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### Comments

The sponsors do not believe that the number of escape assessments levied for willful concealment of personal property should be less than that applied when a change in ownership of real property is unrecorded, which most often occurs with interfamily transfers due to a death and often is the result of ignorance rather than a willful act.

**Amendment.** The August 20 amendment to Section 532 adds the phrase “or change in control.” This amendment is sponsored by the Board of Equalization and was previously contained in SB 1181. For the purpose of technical precision, the phrase “change in ownership” in paragraph (3) of subdivision (b) of Section 532 should state “change in ownership or change in control” to conform with the identical phrase used in paragraph (2) of subdivision (b). Section 532 has been deleted from SB 1181 to avoid chaptering out the provisions of either bill.

### Contiguous Parcels

*Revenue and Taxation Code §606*

#### Current Law

Under existing law, when any tract of land is situated in two or more revenue districts, the part in each district must be separately assessed. However, when the owner of two or more contiguous parcels comprising the land tract is identical, the parcels may be combined into one assessment under two circumstances:

1. The full value of any parcel is less than five thousand dollars (\$5,000), in which case that parcel may be combined with the contiguous parcel with the greatest assessed valuation.
2. The tract of land is being used for a single-family residence and constitutes 15,000 square feet or less, in which case the smallest parcel may be combined with the largest contiguous parcel.

#### Proposed Law

This bill would amend Revenue and Taxation Code 606 to increase the exceptions to 1) land values of less than \$25,000 and 2) land used for single family residences with a size of 45,000 square feet or less.

### Comments

This bill would reduce the number of assessments for small strips of property that must be established because the land crosses tax rate areas. According to the sponsors, with more special assessments and special taxes levied per parcel, property owners want to combine these contiguous parcels to eliminate these fixed parcel charges.

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### Amendments

1. **Leased Personal Property.** (§202.2 and §254) This bill was amended July 3 to add a provision that would have eliminated the need for the public school and lessor to annually file the joint exemption claim form on their leased personal property. The University of California expressed concern with the drafting style, but not the substance, of the amendments to Section 202.2. However, there was not enough time in the session to develop compromise language with the Assessors Association so these provisions were deleted by the August 20 amendment.
2. **Disaster Relief.** (§170) As introduced, this bill contained a provision to amend Section 170 to extend from six months to one year the time period to file a claim for reassessment after a disaster. SB 1181, which is sponsored by the Board, makes an identical amendment but makes other changes to Section 170 as well. The additional amendments to Section 170 include: 1) permitting assessor initiated reductions generally, 2) giving taxpayers more time to file an appeal if they disagree with the post-disaster reassessment, and 3) increasing the eligibility threshold level to require at least \$10,000 in damage. The August 20 amendment deletes the amendment to Section 170 to avoid chaptering out the other changes to Section 170 included in SB 1181.
3. **Williamson Act Subvention Audits.** (§425) As introduced, this bill included a provision to limit the state's audit of a county subvention claim to the last four years. However, the language in the bill was drafted in a manner relating to a taxpayer's assessment rather than the state's audit findings of the county's subvention claims. This provision was deleted by the July 3 amendment.
4. **Religious Exemption Claims.** (§257) As introduced, this bill would have changed the annual date by which taxpayers receiving the religious exemption must return a postcard to the assessor from June 30 to February 15 indicating whether they are still eligible for the exemption, in order to retain the exemption for the following year. This provision was amended out of the bill by the May 1 amendment.

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**COST ESTIMATE:**

The Board would incur some minor, absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

**REVENUE ESTIMATE:**

The change in the base-year value transfer provisions after a disaster would have some minimal revenue impact since a person would not have to wait to rebuild their property prior to receiving the base year value transfer.

The change in the statute of limitations for escape assessments would have some minimal revenue impact. According to assessors, the current six-year period is rarely evoked because of the difficulty of establishing “willful intent.” The other provisions of this measure would also have a minimal revenue impact.

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